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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,498	09/10/2003	Akihiko Ito	S004-5099	3633

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ADAMS & WILKS
31st Floor
50 Broadway
New York, NY 10004

EXAMINER

OSELE, MARK A

ART UNIT	PAPER NUMBER
1734	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/659,498	Applicant(s) ITO, AKIHIKO	
	Examiner Mark A Osele	Art Unit 1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2004.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-31 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 11-31 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-14, 16-19, and 21- 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of MacIntyre and Mistyurik. On pages 1-5 and Fig. 5 of the instant disclosure, it is shown that the admitted prior art of a label printer comprises: a discharge frame having first and second discharge openings; a conveying roller as a first conveying unit for conveying the label web in a first direction; a label peeling member disposed along the first direction for peeling the labels from the backing strip toward a first discharge opening; a peeling roller as a second conveying unit that pulls the backing strip in a direction opposite to the first direction; a thermal print head; a platen roller brought into contact with the surface of the print head; a rotation drive unit rotating the platen roller; wherein the peeling roller contacts the conveying roller and rotates following rotation of the conveying roller creating a nip for the backing strip from which the labels have been peeled and conveying the backing strip toward the second discharge opening. The admitted prior art fails to show a slack preventing member.

MacIntyre shows a slack preventing plate, 36, contacting the front surface of the label strip between the conveying unit and the label peeling member. It would have

been obvious to one of ordinary skill in the art at the time the invention was made to add a slack preventing member to the admitted prior art because MacIntyre shows that slack preventing plates are conventional in label peeling apparatuses. The references as combined fail to show a discharging frame integral with the slack preventing member.

Mistyurik et al. shows a hand held labeler wherein a pivoting frame, 23, with integral label contacting elements, 74, 76, 79, can be pivoted to allow replacement of the label web thereby limiting the need for manual threading of the web between components (column 6, line 62 to column 7, line 9; Fig. 13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a pivoting discharge frame to the apparatus of the references as combined above because Mistyurik et al. shows that this assemblage allows for easier loading of a label web.

3. Claims 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of MacIntyre and Mistyurik et al. as applied to claim 11 above, and further in view of Rieger. Rieger shows a label peeling mechanism wherein the slack preventing member, 107, is rod shaped and the peeling device, 100, is a plate. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a rod shaped slack preventing member and/or a plate shaped peeling device in the apparatus of the references as combined because Rieger shows these to be functionally equivalent alternate expedients to a plate shaped slack preventing member and a peeling roller.

Response to Arguments

4. Applicant's arguments filed November 2, 2004 have been fully considered but they are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The argument that the slack preventing member of MacIntyre is not integral with the discharge frame is not persuasive because Mistyurik et al. is included for showing the parts to be integral.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. In particular applicant argues that the plate of MacIntyre is not a slack preventing member, just a cover and guide is not persuasive because the plate of MacIntyre while a cover and guide also functions to prevent slack.

Applicant also argues that the plate of MacIntyre is not disposed between the first conveying unit and the label peeling member. Applicant is directed to his own Fig. 1 which shows the slack preventing member to be disposed with its upstream end between the first conveying unit and the label peeling member but with its downstream end opposite the peeling member. This is the exact position MacIntyre shows for the slack preventing member.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hsiu-Man which is not prior art against the instant application shows a similar label peeling apparatus.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A Osele whose telephone number is 571-272-1235. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MARK A. OSELE
PRIMARY EXAMINER

January 24, 2005